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PROVISIONAL SUMMARY RECORD OF THE THIRD MEETING

Held at the Parque Central, Caracas,
on Monday, 15 July 1974, at 3.20 p.m.

Chairman: Mr. YANKOV Bulgaria

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STATEMENTS ON ITEM 12 (PRESERVATION OF THE MARINE ENVIRONMENT) AND REVIEW OF THE WORK OF SUB-COMMITTEE III OF THE SEA-BED COMMITTEE

The CHAIRMAN invited members of the Committee to comment on the question of pollution. He appealed to them not to repeat general statements that had been made in the plenary meeting.

Mr. BRAUNE (German Democratic Republic) said that since his delegation had not been represented on the Sea-Bed Committee, he would like to explain its position on the main questions before the Committee.

In the first place, it was essential for special attention to be paid to the prevention of marine pollution and the safeguarding of free maritime research in the framework of the general task of the Conference, namely, the codification and progressive development of the international law of the sea.

The problems of marine pollution were now of universal importance and the prevention of a further increase in marine pollution and the gradual reduction of the strain on the seas were part of the fundamental task of maintaining and improving the natural conditions of life for the present and future generations.

It was natural that countries - especially those of Africa, Asia and Latin America - whose supply of animal proteins depended on fishing were concerned about preserving or re-establishing an ecological balance of the seas which would help them to solve their economic problems more rapidly. Combating pollution of the high seas and conducting marine research for peaceful purposes required the effective co-operation of all States. The present climate of détente and the strengthening of international peace and security were conducive to the expansion of international co-operation in those important fields.

A number of bilateral, regional or specific agreements already existed for protecting the marine environment and others were being drawn up; but the problem could really be solved only by a universal convention covering all fields. Different and piecemeal measures for coastal zones were of little use: internationally agreed standards were needed which would be universally implemented. The sea suffered pollution from a variety of sources - land, ships and sea-bed activities - and it would

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(Mr. Braune, German Democratic Republic)

be useless to close one source only. Moreover, protection of the marine environment could not be isolated from protection of the national environment.

His country, as a seafaring and coastal State, was party to a number of conventions, particularly those drawn up under the auspices of the Inter-governmental Maritime Consultative Organization (IMCO), and the Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area, all of which should provide a sound basis for discussions at the Conference. There were still many gaps to be closed in existing legal regulations. To be comprehensive and effective, internationally agreed obligations should apply to the entire high sea beyond the territorial seas of up to 12 miles. Agreement should be sought on internationally valid norms and standards based on current findings in natural sciences, with a view to improving utilization of the sea's resources with the least possible damage and reducing existing or potential disturbances of the ecological system, and without restricting freedom of navigation or existing or future use of the sea.

Special attention should be paid to pollution of the sea from activities on the sea-bed - a threat to the marine environment that should not be underestimated. To that end internationally co-ordinated minimum standards should be established concerning the continental shelf under national jurisdiction by an appropriate body in co-operation with the United Nations Environment Programme (UNEP).

With regard to the ocean floor, the international authority should be responsible for setting up international regulations for the control of pollution resulting from exploration and utilization of the sea bottom.

Navigation, although not the main source of marine pollution, was of great importance to both coastal and flag States. With a view to protecting the marine environment, it would be useful if all coastal States applied the same international norms and standards within their territorial seas in respect of ships flying foreign flags. Without a uniform régime it would not be possible to achieve objectives in the common interest of all States. Separate regulations by individual coastal States for the innocent passage of foreign ships through their territorial sea or for free

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(Mr. Braune, German Democratic Republic)

passage through straits - such as regulations on ship construction, design, equipment or crew - would seriously impede freedom of navigation and would not help to reduce marine pollution. What was needed was the uniform application of internationally agreed regulations, although the flag State should be allowed to fix additional regulations for the prevention and control of pollution caused by ships of its own flag. Close co-operation between coastal and flag States would be essential to enable the flag State to implement those standards effectively in respect of its own ships.

In the context of an agreement on effective measures for the protection of the marine environment, his delegation understood the freedom of the seas to include: solution of the problem of protection of the marine environment and extension of co-operation in maritime research; the right of all States to free navigation and other legitimate uses of the high sea on the basis of sovereign equality; effective co-operation of all States in the conservation, exploitation and just distribution of the resources of the sea: those resources should not be used by only a few States which had scientific, technical, economic or geographic advantages.

The fundamental questions of the law of the sea were interdependent and required a comprehensive solution.

Mr. BUHL (Denmark) said that his delegation's position had already been made known during the preparatory work in Sub-Committee III of the Sea-Bed Committee.

With regard to marine pollution, his delegation agreed with the main concepts of the articles on basic and particular obligations prepared by Sub-Committee III (volume I of the report of the Sea-Bed Committee, A/9021, pages 86-88), namely: that States should take all necessary measures in accordance with their capabilities to prevent pollution of the marine environment from any source; and that in so doing States should guard against the effect of merely transferring damage or hazard from one area to another.

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(Mr. Buhl, Denmark)

His delegation also agreed with the suggestion (A/9021, page 89) that the convention should contain a provision to the effect that none of the agreed measures should derogate from the sovereign right of a State to exploit its own resources pursuant to its environmental policies and in accordance with its duty to protect and preserve the marine environment both in its own interests and in the interests of mankind as a whole.

His country agreed with the comprehensive approach advocated at previous sessions of the Sea-Bed Committee and considered that the task now was to formulate articles on marine pollution which would eventually form one chapter of a comprehensive convention on the law of the sea. General principles and obligations must be laid down for prevention and control of marine pollution and concerning the rights of flag, port and coastal States to make regulations, their areas of jurisdiction and their powers of enforcement.

The Stockholm Declaration, while not legally binding, placed wide obligations on States concerning steps to prevent pollution of the seas by substances liable to create hazards to human health, harm living resources and marine life, damage amenities or interfere with other legitimate uses of the sea; provision must now be made for the implementation of those obligations. The Stockholm Conference had adopted more concrete recommendations on such specific matters as action against ocean dumping, international monitoring programmes, combining world statistics on mining, production, processing, transport and the use of potential marine pollutants.

It remained to be seen whether the Conference was prepared to agree on detailed rules and standards on such specific issues as dumping and pollution from ships. Denmark had signed or ratified five treaties: the Oslo and London 1972 Conventions for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, the 1973 IMCO Convention for the Prevention of Pollution from Ships, a western European Convention on the Prevention of Marine Pollution from land-based sources, completed in Paris in February 1974, and the March 1974 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area. The Helsinki Convention was the first multilateral treaty which took an over-all approach to the prevention and abatement of marine pollution. It covered all sources of pollution in the area, went further than any other existing treaty in respect of obligations prohibiting dumping and established

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an institutional and organizational framework which was of fundamental importance for the implementation of its provisions and the development of new rules.

He hoped that the standards and provisions in all those treaties would serve as a model for future international agreements.

Specific agreements on anti-pollution action should be worked out separately in co-operation with the appropriate specialized agencies and in certain cases on a regional basis. They should cover primarily the four main sources of pollution: marine pollution from land-based sources, pollution resulting from the exploration or exploitation of sea-bed resources, dumping, and pollution from ships.

Turning to the question of the enforcement of anti-pollution measures, he said that his country, as a seafaring nation highly dependent upon foreign trade, was keenly interested in securing adequate international enforcement measures. It adhered primarily to the principle that the flag State alone should have authority to enforce jurisdiction over its vessels, especially with regard to their design, construction, equipment and manning.

While his delegation was ready to consider the principle of enforcement by the port State, it considered that the latter's authority must be limited to the enforcement of internationally agreed rules, and must not be based on national rules adopted by the port State. Enforcement measures taken by a port State, such as the boarding and inspection of a vessel, should generally be limited to the time when the vessel was in dock, and proceedings undertaken against a vessel should immediately be reported to the flag State.

The very nature of international navigation imposed a global approach to pollution from ships through international conventions elaborated in a technical forum and designed to ensure the preservation of the marine environment for the common good without detriment to international navigation. It was important to avoid a mosaic of possibly contradictory regulations elaborated by individual States.

With regard to earlier proposals to entrust coastal States with jurisdiction over

(Mr. Buhl, Denmark)

a broad area adjacent to their coast beyond their territorial sea, Denmark agreed to the establishment of pollution zones, but took the view that internationally accepted rules, standards and procedures must remain the only valid source of such jurisdiction. They could be worked out within the relevant United Nations specialized agencies. The coastal State would also have a major role to play in cases where the flag State could not or would not enforce internationally agreed rules, as well as in cases of emergency.

In that connexion, the draft articles submitted by France in document A/AC.138/SC.III/L.46, and by the Netherlands in document A/AC.138/SC.III/L.48, represented a promising set of rules. Those submitted by France allowed the coastal State to take steps against acts of pollution which contravened the three principal global anti-pollution conventions, namely the London Conventions of 1972 and 1973, and the IMCO Convention of 1954.

The application of regional agreements dealt with in article 5 of the French proposal needed further consideration. It was essential to reach a common understanding with regard to the enforcement of regionally agreed anti-pollution measures; otherwise, they would discriminate against individuals and ships covered by such regional agreements if they set stricter standards than those contained in global arrangements.

As to specially vulnerable areas, such as the Baltic and the Mediterranean, and "virgin" areas, such as the Arctic, his delegation took the view that coastal States should also have the authority to enforce regional or national anti-pollution measures. Such measures must not be discriminatory and must remain within the strict limits of the objectives of internationally agreed anti-pollution conventions.

His delegation, for its part, would prefer such measures to be approved by a suitable international organ, and coastal States in those areas should be precluded from imposing additional national or regional requirements with regard to ship design and equipment for pollution control.

Mr. AL-HAMID (Iraq) suggested that a more appropriate rendering of the terms "marine pollution" and "marine environment" would be "water pollution" and "water environment", since many pollutants were brought to the sea via rivers. Pollution should be controlled at its source and, consequently, pollution in both internal waters

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(Mr. Al-Hamid, Iraq)

and in the sea should be dealt with as a whole. National and international measures should be integrated on the basis of well-established international standards.

Co-operation among States could be achieved on an international and regional basis through the appropriate specialized agencies which could play a leading role by undertaking scientific research and by promoting studies and the exchange of information on water pollution. The agencies could also render technical assistance to the developing countries by promoting local programmes of scientific research and training and the transfer of advanced technology.

States operating both individually and regionally must implement the internationally agreed measures.

Mr. PETHERBRIDGE (Australia) said that it was essential, as a very minimum, to produce texts on all subjects at the current session, even if they contained reservations or alternatives. Consequently, consideration should be given first to several topics which had not been considered in the Sea-Bed Committee, including the two important matters mentioned by the Canadian delegation. It was not necessary, however, to consider them in great depth at the current stage; what was needed was to elaborate texts reflecting the full spectrum of views, including total or partial reservations, on those remaining topics. The Committee would then be in a position to undertake a second reading of all topics, at which time it could re-examine the texts prepared by the Sea-Bed Committee, incorporate any additional ideas, and begin the task of negotiation.

Turning to the question of the zonal approach to the preservation of the marine environment, the importance of which had been emphasized by the Canadian and many other delegations, he said that the central issue was the nature and extent of the rights and obligations of States in relation to the preservation of the marine environment. The most important reason for the bewildering complexity of the subject was that no basic approach had yet been agreed upon. Some would rely entirely on internationally agreed regulations, enforced either by flag States or port States, or both. Others advocated - either instead of, or in addition to, such regulations - a zonal approach under which, within the 200-mile economic zone, coastal States should have the right to enforce international regulations supplemented by reasonable national regulations.

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(Mr. Petherbridge, Australia)

At the 1972 Stockholm Conference, a number of principles and recommendations had been adopted which were relevant to the question of marine pollution in the context of the current Conference. Recommendation 86, for example, called on Governments to accept and implement available instruments on the control of the maritime sources of marine pollution, and to ensure that the provisions of such instruments were complied with by ships flying their flags and by ships operating in areas under their jurisdiction. Recommendation 92 called on Governments to endorse a number of specific principles as guiding concepts for the Conference on the Law of the Sea, and referred three additional principles on the rights of coastal States to the Conference for appropriate action.

The issue of jurisdiction had subsequently been reflected in the 1973 IMCO International Convention for the Prevention of Pollution from Ships, under article 4 of which any violation of the requirements of the Convention within the jurisdiction of any party to the Convention was prohibited. Furthermore, article 9 provided that the term "jurisdiction" must be construed in the light of international law in force at the time of application or interpretation of the Convention; it also provided that nothing in the Convention must prejudice the codification and development of the law of the sea by the Conference on the Law of the Sea, nor the claims and legal views of any State concerning the law of the sea and the nature and extent of coastal-State and flag-State jurisdiction.

Thus the issue of jurisdiction was squarely before the Conference. Australia favoured a zonal approach, under which a coastal State would have the right under international law to exercise effective anti-pollution control over ships on the high seas in a broad zone contiguous to its territorial sea. In document A/AC.138/SC.III/L.27 Australia had set out some principles under which the coastal State would be able to protect its marine environment without interfering unreasonably with shipping; there was a balance in those principles to which his delegation attached importance.

Some delegations had again raised in plenary meetings the alleged conflict between prevention of vessel-source pollution and freedom of navigation, implying that coastal States might act irresponsibly or that they had no interest in freedom of navigation. His country, as a major user of world shipping, took the view that that was not the case. Since foreign trade was a vital aspect of the economy of most coastal States, any capricious or unreasonable action on their part would risk a rise in freight rates and perhaps even the suspension of shipping services.

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(Mr. Petherbridge, Australia)

Allegations of irresponsibility could be directed from either side, but the Conference could not proceed on the basis that one side or another was going to act irresponsibly. The Conference must seek to formulate a law that would protect all reasonable interests; if it could not proceed on the basis that the law would be observed, its efforts would be pointless.

His delegation believed that, for effective control of vessel-source pollution, the fullest co-operation between shipping and coastal interests was essential. The total environment would be best protected if shipping was subject to internationally agreed regulations between all interested parties which flag States were obliged to enforce on their own vessels. But, in addition, coastal States must remain able to protect their own environment, including that of the economic zone for which they were responsible, and must therefore be able to enforce the internationally agreed regulations. Considerations of time, evidence and distance made local enforcement essential.

Existing regulations, however, might not always be adequate: the 1973 London Conference had itself recommended that intentional pollution be completely eliminated by the end of the decade, thus recognizing the need for stricter international regulations. Since, however, amendment procedures could be slow, the convention currently being drafted must provide for the right of a coastal State, where necessary, to act on its own. That possibility gave rise to difficulties, but they must be faced. Such unilateral action must be reasonable in the circumstances, with provision for appeal to machinery for the settlement of disputes.

For both normal and exceptional cases, a balance must be struck between, on the one hand, a coastal State's ability to protect its environment, including that of its economic zone and, on the other, safeguards against unreasonable interference with shipping. Those who gave so much emphasis to the problem of preventing unreasonable interference with shipping and international trade must be prepared to discuss seriously the interest of coastal States in a pollution zone.

U TUN MYAT (Burma) said that Burma had proclaimed in November 1968 a 12-mile territorial sea, measured from straight baselines drawn in accordance with the provisions of the 1958 Territorial Sea Convention. It supported the concept of an

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(U Tun Myat, Burma)

exclusive economic zone within which the coastal State would have the right to exercise exclusive economic jurisdiction over both renewable and non-renewable resources, and believed that the coastal State should also have jurisdiction over all activities including the control, conservation and regulation of the marine environment, both on the sea-bed and the subsoil, as well as in the superjacent waters.

Burma fully endorsed the principles contained in General Assembly resolution 2749 (XXV) and the doctrine of the common heritage of mankind. It supported the establishment of an international régime and machinery with comprehensive operational, regulatory and managing powers.

Burma believed that the quality and resources of its as yet unspoiled coastline should be protected for present and future generations. It thus welcomed the general awakening of world opinion with respect to the dangers of marine pollution which had followed the 1967 Torrey Canyon disaster, and approved the 1972 Stockholm Declaration of the United Nations Conference on the Human Environment.

His delegation believed that States must co-operate with each other and with competent international bodies, both global and regional, in taking measures to protect the marine environment. Due note would have to be taken of the standards that might be recommended by those international bodies in the formulation of national and municipal laws and regulations to provide adequate control and enforcement measures, although adequate latitude would have to be provided for in the case of the developing countries, which should employ the best practicable means to minimize the discharge of pollutants from all State's sources, both land and marine based, taking into account their economic and technical capabilities. That saving clause was not in defence of a committed fault nor in anticipation of one in the future. Although Burma was developing its industrialization, it was essentially an agrarian country, and land-based pollution was not one of its problems. It did not intend to change that state of affairs but neither was it prepared to accept standards which might perhaps be beyond its economic technical capabilities. None the less, technical assistance for achieving such standards would be welcome.

With respect to pollution from ships, Burma's small merchant navy was under strict instructions to abide by the local pollution regulations of the various ports and those recommended by IMCO at sea.

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(U Tun Myat, Burma)

With regard to administration, his delegation felt that for marine pollution offences the present flag administration alone might not be adequate enough to proceed against an offending ship and that some sort of coastal State and port State administration might have to be provided for in the future treaty on the law of the sea.

As regards jurisdiction, his delegation believed that the municipal law of the coastal State would prevail on all marine pollution offences, including of course, ships caught "in flagrante", in waters within a coastal State's jurisdiction. The establishment of exclusive economic zones would give States additional rights and obligations to control and preserve the marine environment of those zones. His delegation was inclined to agree that divergent pollution control standards between different pollution control zones would create difficulty and uncertainty for ships. Within such exclusive economic zones coastal States should therefore establish internationally agreed pollution control standards, which might be more stringent in especially sensitive areas.

With regard to the area beyond the limits of national jurisdiction, the resources of which had been declared the common heritage of mankind, his delegation believed that it was also the common responsibility of mankind to protect that area from harm arising out of exploration and exploitation of resources and other activities. Such responsibility should be exercised through the international machinery created for such activities, which should therefore have wide powers to ensure effective compliance of the standards it set.

Mr. RASHID (Bangladesh) said that because of the complexity of the problem of marine pollution, there were many possible legal measures to control it, but such control was beyond the capability of any one State or group of States. It called for concerted international action. Any legal instrument must take account of the source of pollution.

Bangladesh, with a coast over 1,000 miles long and heavy reliance on fishing, had an interest in protecting the marine environment adjacent to its coast. It supported the view that the coastal States should have responsibilities for taking appropriate measures to preserve and protect the marine environment, and indeed

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(Mr. Rashid, Bangladesh)

legislation had recently been passed in his country to that effect. However, States should take into account relevant internationally accepted standards so as to ensure proper harmonization between national and international measures. Care must also be taken that the activities carried out under national jurisdiction did not cause pollution damage to other States and to the marine environment as a whole. Moreover, States should take all possible measures to guard against transferring damage or hazards from one environment to another.

As far as scientific research was concerned Bangladesh, as a developing country, did not envisage that scientific research in the high seas should be arbitrarily restricted. It did, however, believe that the coastal States should be able to ensure at least four elements in the future legal framework, namely: the right of coastal States to have prior information or even authorization to undertake scientific research within its jurisdiction, to participate actively in research carried out in their areas of jurisdiction, to control and where necessary disallow such activities if they were against national security, and to have access to data and samples collected and to scientific results for effective publication and dissemination.

Mr. RASOLONDRAIBE (Madagascar) noted that certain important matters had not been made the subject of the texts produced by Sub-Committee III of the Sea-Bed Committee. Those matters included scientific research, the transfer of technology, the definition of marine pollution, responsibility for pollution, freedom of the high seas, relations with other international organizations with responsibilities for pollution, and international conventions.

His delegation, which had been a member of the Sea-Bed Committee, was convinced of the need to change the method of work employed. The Third Committee should concentrate on reaching agreement on general principles before formulating legal principles as such.

Since the idea of adopting "Caracas principles" had already been advanced, it might be useful for the Committee to deal with that matter as well.

As far as pollution was concerned, his delegation was in favour of an economic zone over which the coastal State had total sovereignty, and in which pollution would fall within the competence of that State.

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(Mr. Rasolondraibe, Madagascar)

His delegation was also in favour of an international authority with wide powers and direct competence over pollution. That competence must now be defined and a solution found to the problem of pollutants crossing frontiers.

In Madagascar there was practically no pollution from land sources. Madagascar had a very small navy, and indeed its pollution problem was imported. It was a fact that the great maritime Powers were mainly responsible for marine pollution: hence countries such as Madagascar must have recourse to machinery to protect themselves from ships polluting their region and against negligence or laissez faire on the part of the flag States.

Madagascar had ratified the International Convention for the Prevention of Pollution of the Seas by Oil, but not the November 1973 Convention for the Prevention of Pollution from Ships or the Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances other than Oil. He noted with interest that the Protocol relating to Intervention on the High Seas in Cases of Oil Pollution Casualties extended the scope of the 1969 Brussels Convention by confirming the right of coastal States to take such action on the high seas as may be necessary to avert, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea by substances other than oil following an accident. Such a provision might well be adopted with respect to pollution resulting from negligence or non-compliance with international conventions.

The Committee's work would, moreover, be facilitated if agreement could be reached on the distribution of competences between national and international authorities, including IMCO, ICAO and UNEP.

The meeting rose at 5.05 p.m.